Date: February 6, 1997

Case No.: 95-INA-00319

In the Matter of:

COVENTRY PLACE,
Employer

On Behalf Of:

AHMED DARRAR,
Alien

Appearance: Stefano J. Riznyk, Esq.
For the Employer/Alien

Before: Holmes, Huddleston, and Neusner
Administrative Law Judges

RICHARD E. HUDDLESTON
Administrative Law Judge

DECISION AND ORDER

The above action arises upon the Employer's request for review pursuant to 20 C.F.R. § 656.26 (1991) of the United States Department of Labor Certifying Officer's ("CO") denial of a labor certification application. This application was submitted by the Employer on behalf of the above-named Alien pursuant to § 212(a)(14) of the Immigration and Nationality Act of 1990, 8 U.S.C. § 1182(a)(14) (1990) ("Act"). The certification of aliens for permanent employment is governed by § 212(a)(5)(A) of the Act, 8 U.S.C. § 1182(a)(5)(A), and Title 20, Part 656, of the Code of Federal Regulations ("C.F.R."). Unless otherwise noted, all regulations cited in this decision are in Title 20.

Under § 212(a)(14) of the Act, as amended, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive labor certification unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that, at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work: (1) there are not sufficient workers in the United States who are able, willing, qualified, and available; and, (2) the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

An employer who desires to employ an alien on a permanent basis must demonstrate that

the requirements of 20 C.F.R. Part 656 have been met. These requirements include the responsibility of the employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other reasonable means in order to make a good-faith test of U.S. worker availability.

We base our decision on the record upon which the CO denied certification and the Employer's request for review, as contained in an Appeal File,[1] and any written argument of the parties. 20 C.F.R. § 656.27(c).

Statement of the Case

On October 18, 1993, Coventry Place ("Employer") filed an application for labor certification to enable Ahmed Darrar ("Alien") to fill the position of Food Service Director (AF 39b-39c). The job duties for the position are, "[s]upervise kitchen with six employees, purchase all food and food related products, plan all menus and meals, plan meals for various parties and activities, plan menus for diabetics and other special diets." The requirements for the position are four years of high school and one year of experience in food preparation and management.

On February 16, 1994, the application for labor certification was amended to reflect the duties of, "[s]upervise kitchen with six employees, plan all menus and meals, plan meals for various parties and activities, plan menus for diabetics and other special diets." The amended requirements for the position are four years of high school and two years of experience in the job offered. Additionally, the work schedule was amended to reflect the hours 8:00 a.m. to 5:00 p.m., and the rate of pay was amended to $8.50 per hour (AF 33, 41-41a).

The CO issued a Notice of Findings on October 6, 1994 (AF 21-25), proposing to deny certification on the grounds that the Employer rejected five qualified U.S. applicants for other than lawful, job-related reasons, in violation of § 656.21(b)(6). Accordingly, the Employer was notified that it had until November 10, 1994, to rebut the findings or to cure the defects noted.

In its rebuttal, dated November 7, 1994 (AF 16-20), Counsel for the Employer contended that the U.S. applicants were not found to be qualified for the position as they did not meet the experience requirements and, therefore, were lawfully rejected.

The CO issued the Final Determination on December 15, 1994 (AF 14-15), denying certification because responding, qualified U.S. applicants were available but were rejected for unlawful, job-related reasons in violation of § 656.21(b)(6). The CO also determined that the Employer "is only interested in hiring the alien."

On January 12, 1994, Counsel for the Employer requested reconsideration/review of the Denial of Labor Certification (AF 1-13). On February 17, 1995, the CO forwarded the record to

[1] All further references to documents contained in the Appeal File will be noted as "AF *n*," where *n* represents the page number.

this Board of Alien Labor Certification Appeals ("BALCA" or "Board"). Counsel for the Employer submitted a Brief dated March 15, 1995.

Discussion

Section 656.20(c)(8) provides that the job opportunity must have been open to any qualified U.S. worker. As such, employers are required to make a good-faith effort to recruit qualified U.S. workers for the job opportunity. *H.C. LaMarche Ent., Inc.*, 87-INA-607 (Oct. 27, 1988). Further, § 656.21(b)(6) provides that an employer must show that U.S. applicants were rejected solely for lawful, job-related reasons. Therefore, actions by the employer which indicate a lack of good-faith recruitment effort, or actions which prevent qualified U.S. workers from further pursuing their applications, are a basis for denying certification. In such circumstances, the employer has not proven that there are not sufficient U.S. workers who are "able, willing, qualified and available" to perform the work as required by § 656.1.

In the instant case, the CO, in the NOF, informed the Employer that qualified U.S. workers were unlawfully rejected for the job opportunity (AF 24). In rebuttal, the Employer argued that each applicant was rejected because they did not have the necessary experience (AF 16-20). Specifically, the Employer responded that he rejected applicant Hodge because she has "no planning background whatsoever, nor was any ingenuity or independent thinking required on her behalf. Furthermore, she had not dealt much with entertainment in her limited prison ability." The Employer rejected applicant Amrozowicz because she has no experience in independent planning of menus for entertainment functions. Similarly, Mr. Hampton was rejected because he has not been involved with any type of menu designing for entertainment purposes. Ms. Paschal was rejected because she was involved more in sanitation than cooking. Finally, the Employer rejected Mr. Jefferson because he "was not really involved in any type of menu planning which deals with entertainment." In the FD, the CO continued to find that theses applicants were rejected for unlawful reasons.

Upon thorough review of the record, we agree with the CO. On the ETA Form 750, the Employer listed the duties for the job opportunity as:

> Supervise kitchen with six employees, purchase all food and food related products, plan all menus and meals, plan meals for various parties and activities, plan menus for diabetics and other special diets.

(AF 39). Further, the Employer requires one year of experience in food preparation and management. We find that the Employer, in his rebuttal, made several unsubstantiated assumptions regarding the U.S. applicants' experience as there is no indication that any of the applicants were even interviewed. We further find that each of the above-mentioned applicants appear to meet the stated requirements. For instance, applicant Hodge's resume indicates that she prepared menu items for 1,500 inmates, including meals for those with special diets (AF 51). Similarly, applicant Amrozowicz's resume indicates that she has supervised kitchen operations, served those with special diets, and prepared food for banquets (AF 48). Mr. Hampton's resume includes experience preparing specialty dishes, taking inventory, estimating food cost, and preparing food for banquets (AF 49). Ms. Paschal has experience as menu coordinator. Her

resume also includes experience maintaining accounts of purchases and coordinating menus for special events, including weddings, banquets, and social affairs (AF 47). Finally, applicant Jefferson has served as a head chef which included preparing food for banquets, parties and receptions, taking inventory, and preparing meals for those with special diets (AF 50).

Where an applicant's resume shows a broad range of experience, education, and training that raises a reasonable possibility that the applicant is qualified, although the resume does not expressly state that s/he meets all the job requirements, an employer bears the burden of further investigating the applicant's credentials. *Gorchev & Gorchev Graphic Design,* 89-INA-118 (Nov. 29, 1990) (*en banc)*. See also, *Hambrecht Terrel International,* 90-INA-358 (Dec. 11, 1991); *Nationwide Baby Shops, Inc.*, 90-INA-286 (Oct. 31, 1991); *I & N Consulting Engineers,* 90-INA-239 (July 31, 1991); *The First Boston Corp.*, 90-INA-59 (June 28, 1991). As outlined above, at least five applicants in this case submitted resumes containing the stated minimum requirements and experience in the duties listed. Therefore, the Employer had a duty to, at the very least, contact these applicants for an interview. Furthermore, labor certification is properly denied where the employer rejects a U.S. worker who meets the stated minimum requirements for the job. *Banque Francaise Du Commerce Exterieur,* 93-INA-44 (Dec. 7, 1993); *State of California, Board of Equalization*, 93-INA-42 (Dec. 7, 1993). Accordingly, because it has not been established that the applicants were rejected for lawful, job-related reasons, we find that there was not a good-faith recruitment effort made by the Employer. Thus, the CO's denial of labor certification must be AFFIRMED.

ORDER

The Certifying Officer's denial of labor certification is hereby **AFFIRMED**.

Entered this the _____ day of February, 1997, for the Panel.

RICHARD E. HUDDLESTON
Administrative Law Judge

NOTICE OF PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary of Labor unless, within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except: **(1)** when full Board consideration is necessary to secure or maintain uniformity of its decision; and, **(2)** when the proceeding involves a question of exceptional importance. Petitions for such review must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, N.W., Suite 400
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five double-spaced typewritten pages. Responses, if any, shall be filed within 10 days of service of the petition, and shall not exceed five double-spaced typewritten pages. Upon the granting of a petition, the Board may order briefs.